

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|--------------------------------|---|----------------------|
| ALPHONSO NICHOLAS FAGGIOLO | : | |
| | : | CIVIL ACTION |
| <i>Plaintiff</i> | : | |
| | : | NO. 23-cv-4920 |
| v. | : | |
| | : | Hon. Joel H. Slomsky |
| BOROUGH OF RIDLEY PARK, et al. | : | |
| | : | |
| <i>Defendants</i> | : | |

**RESPONSE TO PLAINTIFF'S MOTIONS TO TAKE JUDICIAL NOTICE FILED
ON BEHALF OF THE HONORABLE BARRY C. DOZOR**

On December 18, 2023, Plaintiff filed a Civil Action Complaint for monetary damages pursuant to the civil rights enabling statute, 42 U.S.C. § 1983 against numerous municipal, county, and commonwealth Defendants including, *inter alia*, the Honorable Barry C. Dozor, a judicial officer of the 32nd Judicial District of Pennsylvania. All Defendants, including Judge Dozor, filed Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6), which remain pending at this time.

Despite the pendency of these dispositive motions, Plaintiff has filed a Motion asking this Honorable Court to take judicial notice of various allegations related to other named Defendants. Though the alleged “facts” do not relate directly to Judge Dozor, he submits this brief response, joining in the responses of other named Defendants.

At this stage, it would be premature to consider Plaintiff's Motion, because dispositive Motions to Dismiss are pending and no factual development or discovery has occurred. As other Defendants have noted, while Federal Rule of Evidence 201(b) permits a court to take judicial notice at any stage of the proceedings, “it should be done sparingly at the pleadings stage.” *Victaulic Co. v.*

Tiernan, 499 F.3d 227, 236 (3d Cir. 2007). “Only in the clearest of cases should a district court reach outside the pleadings for facts necessary to resolve a case at that point.” *Id.*

More importantly, the “facts” of which Plaintiff asks this Court take notice are not appropriate or undisputed – to be clear they are not “facts” at all. They are Plaintiff’s legal conclusions and allegations as to the veracity or legal enforceability of various documents related to the underlying tax litigation. This Court may take judicial notice of state court orders, opinions, and dockets. *M & M Stone Co. v. Commonwealth*, 388 Fed. Appx. 156, 162 (3d Cir. 2010); *Hadesty v. Rush Twp. Police Dep’t*, No. 14-cv-2319, 2016 WL 1039063, at *5 (M.D. Pa. 2016). It may also consider public documents and records attached to a motion to dismiss. See *Pension Benefit Guaranty Corp. v. White Consolidated Indust., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1992), *cert. denied*, 510 U.S. 1042 (1994). Thus, while this Court may generally take judicial notice of certain documents, it cannot take notice of Plaintiff’s legal conclusions and inferences related to documents.

For the foregoing reasons, the Honorable Barry C. Dozor joins in other Defendants’ Responses, and respectfully requests this Honorable Court deny Plaintiff’s Motion to Take Judicial Notice.

Respectfully submitted,

/s/ Nicole Feigenbaum
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on April 24, 2024, she personally caused to be served upon the following a true and correct copy of the foregoing *Response to Plaintiff's Motion to Take Judicial Notice* by ECF to all counsel of record, and by U. S. mail to Plaintiff at:

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